

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00088-EGS

FREEDOM WATCH, INC. v. MUELLER et al
Assigned to: Judge Emmet G. Sullivan
Cause: 05:552 Freedom of Information Act

Date Filed: 01/15/2018
Jury Demand: Plaintiff
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: Federal Question

Plaintiff**FREEDOM WATCH, INC.**

represented by **Larry E. Klayman**
KLAYMAN LAW GROUP, P.A.
2020 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006
(561) 558-5536
Email: leklayman@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

ROBERT S. MUELLER
Special Counsel

represented by **Joseph C. Dugan**
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
(202) 514-3259
Email: joseph.dugan@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley P. Humphreys
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20530
(202) 305-0878
Fax: (202) 639-6066
Email: bradley.humphreys@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant**U.S. DEPARTMENT OF JUSTICE**

represented by **Joseph C. Dugan**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley P. Humphreys
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**FEDERAL BUREAU OF INVESTIGATION**

represented by **Joseph C. Dugan**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley P. Humphreys
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/15/2018	<u>1</u>	COMPLAINT against FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE with Jury Demand (Filing fee \$ 400 receipt number 0090-5286627) filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Civil Cover Sheet, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons)(Klayman, Larry) (Entered: 01/15/2018)
01/16/2018		Case Assigned to Judge Emmet G. Sullivan. (zsb) (Entered: 01/16/2018)
01/16/2018	<u>2</u>	SUMMONS (3) Issued Electronically as to FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE (Attachment: # <u>1</u> Notice and Consent)(zsb) (Entered: 01/16/2018)
01/16/2018		SUMMONS Not Issued as to U.S. Attorney and U.S. Attorney General.....SUMMONS NOT FILED AT THE TIME COMPLAINT WAS FILED. (zsb) (Entered: 01/16/2018)
01/16/2018	<u>3</u>	ENTERED IN ERROR.....REQUEST FOR SUMMONS TO ISSUE filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Summons)(Klayman, Larry) Modified on 1/17/2018 (znmw). (Entered: 01/16/2018)
01/17/2018	<u>4</u>	STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 01/17/18. (Attachment: # <u>1</u> Exhibit 1) (mac) (Entered: 01/17/2018)
01/17/2018		NOTICE OF ERROR re <u>3</u> Request for Summons to Issue; emailed to leklayman@gmail.com, cc'd 5 associated attorneys -- The PDF file you docketed contained errors: 1. Please refile document, 2. ENTERED IN ERROR; Summons are blank; Resubmit completed summonses. (znmw,) (Entered: 01/17/2018)
01/17/2018	<u>5</u>	REQUEST FOR SUMMONS TO ISSUE re Notice of QC, filed by FREEDOM WATCH, INC.. Related document: Notice of QC., (Attachments: # <u>1</u> Summons)(Klayman, Larry) (Entered: 01/17/2018)
01/18/2018	<u>6</u>	SUMMONS (2) Issued Electronically as to U.S. Attorney and U.S. Attorney General (znmw) (Entered: 01/18/2018)
02/20/2018	<u>7</u>	NOTICE of Appearance by Joseph C. Dugan on behalf of All Defendants (Dugan, Joseph) (Entered: 02/20/2018)
02/20/2018	<u>8</u>	ANSWER to <u>1</u> Complaint, by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Exhibit List, # <u>2</u> Exhibit A (Order No. 3915-2017), # <u>3</u> Exhibit B (1/23/18 letter), # <u>4</u> Exhibit C (2/13/18 letter), # <u>5</u> Exhibit D (2/20/18 letter))(Dugan, Joseph) (Entered: 02/20/2018)
02/20/2018	<u>9</u>	ERRATA by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE <u>8</u> Answer to Complaint, filed by ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION. (Attachments: # <u>1</u> Errata Exhibit B – corrected)(Dugan, Joseph) (Entered: 02/20/2018)
03/01/2018		MINUTE ORDER. Plaintiff brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The parties are directed to meet and confer and propose a joint scheduling order for further proceedings in this case by no later than April 1, 2018. The parties' joint proposed scheduling order shall address the following: (1) The status of plaintiff's FOIA request; (2) The anticipated number of documents responsive to plaintiff's FOIA request; (3) The anticipated date(s) for release of documents responsive to plaintiff's FOIA request; (4) Whether a motion for an Open America stay is likely in this case; (5) Whether a Vaughn index will be required in this case; (6) Whether this case would benefit from referral to a magistrate judge or the District

		Court Mediation Program for purposes of settlement; and (7) A proposed briefing schedule for dispositive motions, if applicable. If the parties are unable to agree on a joint recommendation, the joint proposed scheduling order shall include each party's individual recommendations. Signed by Judge Emmet G. Sullivan on 3/1/2018. (lcegs3) (Entered: 03/01/2018)
03/01/2018		Set/Reset Deadlines: Joint Scheduling Order due by 4/1/2018. (mac) (Entered: 03/01/2018)
03/23/2018	<u>10</u>	MOTION for Summary Judgment by FREEDOM WATCH, INC. (Attachments: # <u>1</u> Exhibit)(Klayman, Larry) (Entered: 03/23/2018)
03/30/2018	<u>11</u>	Joint STATUS REPORT by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Dugan, Joseph) (Entered: 03/30/2018)
04/02/2018		MINUTE ORDER in view of <u>11</u> joint status report, in which the plaintiff requests an expedited status conference and the defendants request more time to complete a search for potentially responsive records, the Court finds that there is good cause to allow the defendants to continue searching for potentially responsive records. The government is therefore ordered to complete its search for potentially responsive records by the end of April 2018. Defendants shall file a status report apprising the Court of the number of responsive documents and defendants' position as to further scheduling matters by no later than May 11, 2018. Signed by Judge Emmet G. Sullivan on 4/2/2018. (lcegs3) (Entered: 04/02/2018)
04/03/2018		Set/Reset Deadlines: Defendants Status Report due by 5/11/2018 (mac) (Entered: 04/03/2018)
04/06/2018	<u>12</u>	RESPONSE re <u>10</u> MOTION for Summary Judgment filed by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Appendix, # <u>2</u> Exhibit A (Counter-Statement of Disputed Facts), # <u>3</u> Exhibit B (Dugan Declaration), # <u>4</u> Exhibit C (Castellano Declaration), # <u>5</u> Text of Proposed Order)(Dugan, Joseph) (Entered: 04/06/2018)
05/01/2018	<u>13</u>	SUPPLEMENT and Update re <u>11</u> Status Report by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit)(Klayman, Larry) Modified event title and added link on 5/8/2018 (znmw). (Entered: 05/01/2018)
05/02/2018		MINUTE ORDER directing the government to respond to <u>13</u> plaintiff's supplemental status report by no later than May 4, 2018. Signed by Judge Emmet G. Sullivan on 5/2/2018. (lcegs3) (Entered: 05/02/2018)
05/02/2018		Set/Reset Deadlines: Government Response To <u>13</u> Plaintiff's Supplemental Status Report due by 5/4/2018 (mac) (Entered: 05/02/2018)
05/04/2018	<u>14</u>	RESPONSE re <u>13</u> to Plaintiff's "Supplement and Update" filed by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Dugan, Joseph) Modified to add link on 5/8/2018 (znmw). (Entered: 05/04/2018)
05/08/2018	<u>15</u>	RESPONSE re <u>14</u> Response to Document filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit)(Klayman, Larry) (Entered: 05/08/2018)
05/09/2018	<u>16</u>	NOTICE of Third Supplement to Joint Status Report by FREEDOM WATCH, INC. re <u>15</u> Response to Document, <u>13</u> Status Report (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Klayman, Larry) (Entered: 05/09/2018)
05/11/2018	<u>17</u>	STATUS REPORT by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Dugan, Joseph) (Entered: 05/11/2018)
05/14/2018		MINUTE ORDER directing plaintiff to respond to the timeline proposed in <u>17</u> defendants' status report by no later than May 21, 2018. If the plaintiff intends to request a production timeline that is faster than the one proposed by the government, the plaintiff is directed to support such a request with reasons beyond those included in its previously-filed supplements. Signed by Judge Emmet G. Sullivan on 5/14/2018. (lcegs3) (Entered: 05/14/2018)

05/14/2018	<u>18</u>	RESPONSE to <u>May 11</u> <u>17</u> Status Report filed by FREEDOM WATCH, INC. (Klayman, Larry) (Entered: 05/14/2018)
05/16/2018		MINUTE ORDER in view of <u>17</u> government's status report and <u>18</u> plaintiff's response, the Court hereby schedules a status conference for May 24, 2018 at 10:30 am in Courtroom 24A. Signed by Judge Emmet G. Sullivan on 5/16/2018. (lcegs3) (Entered: 05/16/2018)
05/16/2018		Set/Reset Hearings: Status Conference set for 5/24/2018 at 10:30 AM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 05/16/2018)
05/24/2018		Minute Entry for proceedings held before Judge Emmet G. Sullivan: Status Conference held on 5/24/2018. Order forthcoming from chambers. (Court Reporter: Scott Wallace.) (jl) (Entered: 05/24/2018)
05/25/2018		MINUTE ORDER. As ordered at the May 24, 2018 status conference, the government is directed to produce all non-exempt documents responsive to Freedom Watch's FOIA request by no later than September 4, 2018. The parties shall file a joint status report recommending next steps for further proceedings by no later than September 18, 2018. In light of the Court's Order, <u>10</u> plaintiff's motion for summary judgment is denied as moot. Signed by Judge Emmet G. Sullivan on 5/25/2018. (lcegs3) (Entered: 05/25/2018)
05/27/2018		Set/Reset Deadline: The parties shall file a Joint Status Report recommending the next steps for further proceedings by 9/18/2018. (jth) (Entered: 05/27/2018)
08/13/2018	<u>19</u>	TRANSCRIPT OF PROCEEDINGS before Judge Emmet G. Sullivan held on 5-24-18; Page Numbers: 1-30. Date of Issuance: 8-13-18. Court Reporter/Transcriber Scott Wallace, Telephone number 202-354-3196, Transcripts may be ordered by submitting the Transcript Order Form<P></P><P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.<P> NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.<P></P> Redaction Request due 9/3/2018. Redacted Transcript Deadline set for 9/13/2018. Release of Transcript Restriction set for 11/11/2018.(Wallace, Scott) (Entered: 08/13/2018)
08/29/2018	<u>20</u>	MOTION for Extension of Time to <i>Complete FOIA Production</i> by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Exhibit List, # <u>2</u> Exhibit A (E-mail chain), # <u>3</u> Exhibit B (Declaration), # <u>4</u> Text of Proposed Order)(Dugan, Joseph) (Entered: 08/29/2018)
08/30/2018	<u>21</u>	RESPONSE re <u>20</u> MOTION for Extension of Time to <i>Complete FOIA Production and Request for Emergency Limited Evidentiary Hearing</i> filed by FREEDOM WATCH, INC.. (Klayman, Larry) (Entered: 08/30/2018)
09/03/2018		MINUTE ORDER granting in part <u>20</u> defendants' opposed motion for an extension of time to complete FOIA production. The defendants shall produce to the plaintiff the responsive, non-exempt records it identifies in paragraph 2 of its motion by no later than September 4, 2018. The defendants shall thereafter file a status report updating the Court on the status of its remedial search efforts by no later than September 12, 2018. Signed by Judge Emmet G. Sullivan on 9/3/2018. (lcegs3) (Entered: 09/03/2018)
09/04/2018		Set/Reset Deadlines: Defendants Status Report due by 9/12/2018. (mac) (Entered: 09/04/2018)
09/12/2018	<u>22</u>	STATUS REPORT by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Dugan, Joseph) (Entered: 09/12/2018)

09/14/2018	<u>23</u>	RESPONSE to <u>22</u> Defendants' Status Report filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit)(Klayman, Larry) Modified on 9/19/2018 to add linkage. (ztd). (Entered: 09/14/2018)
09/17/2018		MINUTE ORDER in view of <u>22</u> the government's status report and <u>23</u> the plaintiff's response, the Court hereby directs the government to file another status report by no later than September 26, 2018. The status report should inform the Court how many additional records, if any, must be processed and should provide an estimate as to how long it will take to produce those records to the plaintiff. The status report should also describe the technical issue the government discovered and explain why the government did not discover the issue earlier. The Court declines to schedule a hearing at this time, in light of the government's timely production of all non-exempt records as of September 4, 2018. Signed by Judge Emmet G. Sullivan on 9/17/2018. (lcegs3) (Entered: 09/17/2018)
09/17/2018		Set/Reset Deadlines: Government Status Report due by 9/26/2018. (mac) (Entered: 09/17/2018)
09/26/2018	<u>24</u>	STATUS REPORT by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration)(Dugan, Joseph) (Entered: 09/26/2018)
10/01/2018		MINUTE ORDER in view of <u>24</u> defendants' status report, the defendants are hereby directed to finalize production of the additional responsive, non-exempt records by no later than November 1, 2018. Requests for additional time will be viewed with disfavor. Signed by Judge Emmet G. Sullivan on 10/1/2018. (lcegs3) (Entered: 10/01/2018)
10/09/2018	<u>25</u>	NOTICE of Appearance by Bradley P. Humphreys on behalf of All Defendants (Humphreys, Bradley) (Entered: 10/09/2018)
10/12/2018	<u>26</u>	NOTICE of Change of Address by Joseph C. Dugan (Dugan, Joseph) (Entered: 10/12/2018)
11/02/2018		MINUTE ORDER directing the parties to file a joint status report to update the Court on the defendants' production and to provide recommendations for further proceedings by no later than November 19, 2018. Signed by Judge Emmet G. Sullivan on 11/2/2018. (lcegs3) (Entered: 11/02/2018)
11/05/2018		Set/Reset Deadlines: Joint Status Report due by 11/19/2018. (mac) (Entered: 11/05/2018)
11/19/2018	<u>27</u>	Joint STATUS REPORT by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Humphreys, Bradley) (Entered: 11/19/2018)
11/26/2018		MINUTE ORDER. The Court has considered the parties' positions, as set forth in <u>27</u> joint status report. The Court is not inclined to agree with plaintiff that good cause exists for allowing discovery regarding the adequacy of the defendants' search. That said, the Court will allow plaintiff to file a brief, no longer than 8 pages, regarding the propriety of allowing discovery by no later than December 7, 2018. The government is directed to respond by no later than December 21, 2018. The government's response shall not exceed 8 pages. The Court declines to set a summary judgment briefing schedule at this time. Signed by Judge Emmet G. Sullivan on 11/26/2018. (lcegs3) (Entered: 11/26/2018)
11/27/2018		Set/Reset Deadlines: Plaintiff Brief due by 12/7/2018. Government Response due by 12/21/2018 (mac) (Entered: 11/27/2018)
12/04/2018	<u>28</u>	ENTERED IN ERROR.....MOTION for Discovery and Plaintiff's Response to the Court's Minute Order of November 26, 2018 Concerning the Allowance of Discovery by FREEDOM WATCH, INC. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Text of Proposed Order)(Klayman, Larry) Modified on 12/4/2018 (jf). (Entered: 12/04/2018)
12/04/2018		NOTICE OF CORRECTED DOCKET ENTRY: Document No. re <u>28</u> MOTION for Discovery and Plaintiff's Response to the Court's Minute Order of November 26, 2018 Concerning the Allowance of Discovery was entered in error and counsel was instructed to refile said pleading using the court event. (jf) (Entered: 12/04/2018)

12/04/2018	<u>29</u>	RESPONSE TO ORDER OF THE COURT re Order,, filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit 1)(Klayman, Larry) (Entered: 12/04/2018)
12/21/2018	<u>30</u>	RESPONSE re <u>29</u> Response to Order of the Court filed by FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, U.S. DEPARTMENT OF JUSTICE. (Humphreys, Bradley) (Entered: 12/21/2018)
12/26/2018	<u>31</u>	REPLY re: <u>29</u> to Defendants' Memorandum in Response to Plaintiff's Response to Order of the Court filed by FREEDOM WATCH, INC.. (Klayman, Larry) Modified on 12/27/2018 (ztd). (Entered: 12/26/2018)
01/03/2019		MINUTE ORDER denying <u>29</u> Freedom Watch's request for discovery and/or in camera review. Freedom Watch's request is based on mere conjecture and is premature. As this Court stated in Judicial Watch v. Department of State, "[d]iscovery is rare in FOIA cases." ECF No. 73 at 8–9, 13-cv-1363 (citing Thomas v. FDA, 587 F. Supp. 2d 114, 115 (D.D.C. 2008)(noting that "discovery is an extraordinary procedure in a FOIA action")(allowing discovery because the plaintiff had raised a sufficient question as to the adequacy of the government's search). That said, discovery "should be permitted... when a plaintiff raises a sufficient question as to the agency's good faith" in responding to the FOIA request. Id. at 9 (citations omitted). Here, Freedom Watch has not raised a sufficient question as to the agency's good faith in responding to its FOIA request. Instead, it offers two speculative accusations. First, it suggests that a spokesperson for the Special Counsel's Office has been leaking grand jury information because he "secretly met" with a member of the press, as evidenced by the "chumminess" in emails between the spokesperson and the member of the press (that were produced to Freedom Watch). This accusation is unfounded. The Court has reviewed the emails and they do not corroborate Freedom Watch's claim. Indeed, friendliness in professional emails does not raise a sufficient question as to the agency's good faith. Second, Freedom Watch accuses the Department of Justice of bad faith for "conveniently" discovering a "technical glitch" at the last minute, causing it to re-run its search of responsive documents. However, there is no basis in reality to believe that this disclosure was, as Freedom Watch puts it, an "attempt to shield themselves from the public seeing evidence of their routinely leaking grand jury information to the media and other disclosures for their tactical motivations." When the government disclosed that it had discovered a problem that required it to re-run a search to ensure that it had found all responsive documents, the Court ordered the defendant to file a declaration explaining what happened and why the government had not discovered it earlier. See Sept. 17, 2018 Minute Order. The government filed a sworn declaration that satisfied the Court that the reason for the delay in production was benign. Moreover, as a result of the government discovering the technical difficulty, Freedom Watch may have received additional records to which it was entitled. Because the government's declarations must be "accorded a presumption of good faith, which cannot be rebutted by purely speculative claims," SafeCard Servs. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991)(quotations omitted), the Court will not permit discovery at this stage of the proceedings. Additionally, in camera review is premature. Typically, discovery in the absence of bad faith or in camera review is permitted after summary judgment briefing. If Freedom Watch believes the government improperly withheld or redacted documents, it can explain its argument in its opposition to the defendant's motion for summary judgment. "If the Court agrees with Plaintiff that [the defendant] is not entitled to summary judgment, the Court shall reconsider Plaintiff's requests for discovery. However, the Court shall not permit any discovery to be taken until it has considered [the defendant's]... motion for summary judgment." North v. U.S. Dep't of Justice, 729 F. Supp. 2d 74, 7778 (D.D.C. 2010). In light of this Order, the parties are directed to file a joint status report recommending a summary judgment briefing schedule by no later than February 4, 2019. Signed by Judge Emmet G. Sullivan on 1/3/2019. (lcegs3) (Entered: 01/03/2019)
01/03/2019		Set/Reset Deadlines: Joint Status Report due by 2/4/2019. (mac) (Entered: 01/03/2019)